

# IDAHO Supreme Court

JUDICIAL/ADMINISTRATIVE NEWS

JUNE 2004



## Henderson Named Court Legal Counsel

Michael A. Henderson, the long-time chief of the Criminal Division in the Idaho Attorney General's office, has been named the new Legal Counsel to the Idaho Judiciary.

Henderson is expecting to assume his new responsibilities with the Court on or about July 1.

Henderson said he is looking forward to the new challenge. "In many ways it will be a welcome change," he said. "I have been very interested in the work of the Court and this will get me involved in many issues related to the administration of the courts and court rules, all issues that really interest me."

The new legal counsel is a graduate of the Brooklyn Law School and did his undergraduate work at the State University of New York in Stony Brook.

Henderson has headed the Criminal Division for the Attorney General since 1997 and has been with the office since 1985. His previous experience included work with the Twin Falls, Blaine and Ada County Prosecutor's offices.

Henderson attended the recent Court Administrative Conference and he said he felt that it would be important for him to become acquainted, as soon as possible, with judges, particularly administrative judges, and other court personnel in order to understand issues and concerns that are important to them.

## Mental Health Court Graduation

Idaho's first Mental Health Court graduation, for three graduates, was held April 29 in Rexburg. Judge Brent Moss reports the three graduates, two women and a man, had long standing histories of legal problems which were substantially impacted by mental health and substance abuse issues.

Each of the successful graduates, according to Judge Moss, "was at a point where if something wasn't resolved regarding their mental health issues, the only other option was the state penitentiary."

Judge Moss said he and Judge Richard St. Clair take weekly turns meeting with the mental health court participants allowing the Court to mandate medication and daily monitoring that facilitates the participants learning about the symptoms of their own illness and the necessity of taking responsibility for treating their conditions.

"Folks can become fairly stable over time," Judge Moss said, and become contributing citizens. The Court requires six months of regular follow up evaluation for graduates.

Commenting on the success of the mental health court approach, Judge Moss said, "This is one of the best things that a judge ever gets a chance to do. By the time all three had graduated, two were working full time, and another was working regularly."

Judge Moss said each of the graduates will be asked to participate in alumni groups in order to form a support group of fellow graduates. The Judge agreed that the argument is often made that mental health or drug courts are cost effective, since they can help offenders avoid incarceration and its high cost to taxpayers. But, as Judge Moss noted, "even if the costs (of the court and prison) were equal, the results are so substantially different as to make it all very worthwhile."

## Conflict Resolution Panel

A new, blue ribbon Media and the Courts Conflict Resolution Panel is now organized in Idaho and able to be called upon by any member of the media or any judge at any time to resolve significant conflict that might arise among the media and the Idaho courts.

The new panel has been established by the Media/Courts Committee to help sort out significant conflicts of courtroom coverage on a case-by-case basis. The panel can speak with or mediate on behalf of any lawyer, judge, or journalist facing a "free press/fair trial issue." The Conflict Resolution Panel is able to suggest ways that fair trial concerns can be addressed while preserving public access to the courts.

The following individuals have agreed to serve on the Conflict Resolution Panel:

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Contacting any one of the members can convene the Resource Panel, or you may contact:

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## Important Websites



- ⚖️ **Idaho Supreme Court:** <http://www.isc.idaho.gov>
- ⚖️ **Idaho State Law Library:** <http://www.isll.idaho.gov>
- ⚖️ **Idaho State Bar:** <http://www2.state.id.us/isb>
- ⚖️ **Court Assistance Offices:** <http://www2.state.id.us/cao>
- ⚖️ **Idaho Law Foundation 2001 – 2002 Annual Report Online:** [http://www2.state.id.us/isb/gen/ilf\\_info.htm#AnnRpt](http://www2.state.id.us/isb/gen/ilf_info.htm#AnnRpt)
- ⚖️ **National Center for State Courts:** <http://www.ncsconline.org>

## Institute for Court Management

The Clerks Manual and Training Committee invested many hours in preparation and planning of the seventh annual Idaho Institute for Court Management that was held in April, which proved to be hugely successful with over 247 participants from 42 counties.

The Committee convened a meeting prior to the Institute to review new sections and clerk's procedures for the Clerks Manual CD and to develop long-term goals and strategies for clerk and deputy clerk training in Idaho.

Pre-conference workshops were also held that included a Supervisor/Management and a New Clerk Orientation Track.

Chief Justice Linda Copple Trout welcomed the participants to the Institute and thanked them for their important work and dedication to the judicial system. Dr. Vincent Kituku then addressed the group with a motivational speech, "Overcoming Buffalos in the Workplace."



*Chief Justice Trout introduces the participants.*

The two and a half day Institute offered a variety of training including "nuts and bolts" sessions on Criminal Case Procedures, Civil Protection Orders, Restitution, Administrative Rule 32, Juvenile Case Procedures, Exhibits, Warrants and Bonds, Probate Case Procedures and Appeals to the District Court, as well as a session on Team Building and a Court Assistance Officer Training.

A computer track involved laptops for hands-on learning, included sessions on ISTARS, the Clerks Manual CD and Word processing. Participants also enjoyed a social hour to meet other clerks and deputy clerks, with a tour of the new Ada County Courthouse.

Next year's Institute will be held at Boise's Doubletree Riverside beginning with pre-conference workshops on Tuesday, April 26. The 2005 conference will conclude on Friday, April 29.



*Left: Patti Tobias recognizes Dorothy McMullen who has been with Twin Falls for 33 years.*



*Below: IICM participants work in the computer lab.*

## Odds & Ends

**Legislative Budget Summary is now available online at:** <http://www2.state.id.us/dfm/BudgetSummary/BudSum2004/Contents.htm>. If you are unable to view the on-line version or would like a hard copy, contact the Division of Financial Management At 334-3439 or [ahamann@dfm.state.id.us](mailto:ahamann@dfm.state.id.us).

### Juveniles as Adults Publication Available

The National Center for Juvenile Justice (NCJJ) has announced the availability of "Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws," which provides a comprehensive overview of legal mechanisms under which juveniles may be tried and sanctioned in the criminal justice system. It's available online at:

<http://ncjj.servehttp.com/NCJJWebsite/pdf/transferbulletin.pdf>



## A round-up of judicial personnel making news across Idaho

### Judge Heise Acting Trial Court Administrator

First District Administrative District Judge Charles Hosack announced recently that, after consultation with First District Judges and with Judge Debra Heise, and Patti Tobias, Administrator for the Court, that Judge Heise would fill the position of acting Trial Court Administrator. The appointment follows the retirement of Judge Don L. Swanstrom.

While the First District Magistrate Commission is in the process of determining Judge Swanstrom's successor, there can be no immediate action taken on hiring a replacement Trial Court Administrator. Although the Supreme Court would like to have a full-time trial court administrator in the First Judicial District, current funding limitations preclude hiring anyone to fill that position.

Judge Hosack said he is very pleased that Judge Heise has agreed to handle the duties and that all in the district are looking forward to working with her.

### Magistrate Judges Named

Boise City Attorney Roger Cockerille and Deputy Ada County Prosecutor James S. Cawthon have been appointed to serve as magistrate judges in the 4th Judicial District.

Both were appointed by the Magistrate Commission to replace Judge John Dutcher who retired in May and Boise County Judge Patricia Young who will be retiring in July.

### Award Winner, County Clerk Dies

Long-time Washington County Clerk, and former Kramer Award recipient, Mary Elizabeth March Kautz, has died.

Kautz is fondly remembered for a career in county government that began when she assumed the position of Clerk of the District Court, Auditor and Recorder in January 1967. She held that position until her retirement in January 1995.

Mary Elizabeth also held all of the offices in the Idaho Association of County Recorders and Clerks and was elected president in 1972-73. To her credit she also held all of the offices in the Idaho Association of Commissioners and Clerks and was the first clerk and the first woman to be elected president, serving from 1985-86.

Kautz served on numerous Supreme Court Committees and was the first clerk to chair a Supreme Court Committee to study consolidated elections.

She was awarded the prestigious Kramer Award In 1987, along with Judge Edward J. Lodge. The award is presented annually in recognition of Excellence in Judicial Administration in Character and Action. This honor singled her out as the first non-judicial person to receive this award.

### Judge Cassidy To Private Practice

Gooding County Magistrate Judge Kevin Cassidy has resigned to join the Roark Law Firm in Blaine County. Judge Cassidy served nine years as Gooding County's Magistrate Judge. Prior to his court service, Cassidy served as a Deputy Attorney General in the criminal division.

Judge Cassidy said he is "looking forward to private practice. My love is the courtroom. Being a Magistrate Judge allowed me to be in the courtroom, but after nine years I was looking forward to something new."

He said he plans to focus on civil litigation as he enters private practice.

### Retirement for Judge May

An open house ceremony was held on April 30 in Blaine County, honoring the retirement of Fifth District Judge James J. May. Former District Judge William J. (Bill) Hart served as Master of Ceremonies. Former Chief Justice of the Idaho Supreme Court, Robert Bakes, along with many other distinguished members of the Bar and the judiciary made presentations, while sharing memories of Judge May with those attending the event.





# JUDICIAL EDUCATION



## Fall Domestic Violence Conference Planned

A multi-disciplinary grant-funded conference, "Enhancing Skills in Domestic Violence Cases" is set for September 22-24 in Sun Valley.

Grant funds will pay for the judges' and court administrators' participation. This multi-disciplinary conference will also be open (on a fee and self-pay basis) to other professionals, including mediators, parenting coordinators, and family court service staff personnel. Also encouraged to attend are CASA staff and volunteers, as well as custody evaluators, counselors, domestic violence evaluators, including treatment providers, probation/parole officers, and attorneys.

The conference will begin Wednesday, September 22, 2004 at noon, and will conclude on Friday, September 24, 2004, at noon. Numerous nationally known speakers are anticipated. Breakout sessions are planned for the various interest groups.

A highlight for the judges will be the Annual Supreme Court Update by Professor Erwin Chemerinsky who will speak Friday morning. His lecture is scheduled for the judges and attorneys who are in attendance. There are other sessions of interest planned for Friday morning for the other professionals attending the conference.

(Because of this appearance by Professor Chemerinsky, no other Distance Learning lecture from him is scheduled for this year).

For more information, call or email Judge Lowell Castleton at 208-371-9370, or [Lcastleton@isc.state.id.us](mailto:Lcastleton@isc.state.id.us).



back row, left to right: Hon. Ronald E. Bush, District Judge, 6th Judicial District; Hon. Robert C. Nafz, Magistrate Judge, Bannock County; Hon. John K. Butler, District Judge, 5th Judicial District; Hon. Robert Elgee, District Judge, 5th Judicial District  
front row, left to right: Hon. G. Richard Bevan, District Judge, 5th Judicial District; Hon. Michael Oths, Magistrate Judge, Ada County

## Spring 2004 New Judges Orientation Held

Six new Judges, along with a Justice "in waiting", former Idaho Attorney General Jim Jones, participated in the recent New Judges Orientation.

The seven participants were Justice-elect Jones, District Judges Rich Bevan and John Butler, both from the Fifth District, along with Judge Robert Elgee, a veteran Magistrate Judge recently appointed a District Judge to take the place of retiring Judge James May. Sixth District Judge Ron Bush, who had participated in portions of last September's New Judges Orientation shortly after his appointment, was joined by new Magistrate Judges Michael Oths (Ada County) and Rob Nafz (Bannock County).

This was the first New Judges Orientation held in the spring instead of the fall, and subsequent annual orientations will now be held in May of each year. There are already eight new judges anticipated, which were not filled in time for participation in this year's orientation.

Members of the judiciary may recall that since last fall New Judges Orientation is now a two-phase program, with the week-long course just concluded, and then another "Phase II", which is more specific to the needs of either District or Magistrate Judges, held the two days prior to the beginning of the Magistrate Judges Institute and District Judges Seminar, respectively.

The judiciary is deeply appreciative of all those who have assisted in this year's orientation, particularly the faculty who give so freely of their time in not only presenting as requested, but also in their preparation and travel time. Uniformly high evaluations were given all presenters on the faculty. Thanks to all who assisted in any way.

## Media Workshop Held

There were over 60 attendees at the May 13 Media Day Workshop sponsored by the Idaho State and Federal Courts, and the Public Information and Community Outreach Committee of the U.S. Ninth Judicial Circuit.

Those in attendance were judges from both appellate and district courts through the state of Idaho and the Ninth Circuit, as well as many media professionals from both print and television.

Highlights of the Media Day Workshop included the provocative discussion led by the Dean of the University of Idaho Law School Donald Burnett on the ethical responsibilities to the public for those

in the media and the judiciary. Both the State and Federal Courts had presentations on the new age of electronic access to the judiciary and internet access to court information. U.S. Attorney Tom Moss and Deputy Federal Defender Tom Monaghan provided an enlightening discussion on the Patriot Act and how it affects the media.

The program was concluded by two special guests with a Point-Counter-Point discussion by Lucy Dalglish, Media Attorney and Executive Director of Reporters Committee on Freedom of the Press in Washington DC and Brian Sun, Los Angeles attorney representing Wen Ho Lee. They presented two unique viewpoints on the ethical responsibilities of reporters when considering confidentiality of sources.



## Judge Gutierrez Attends National Court Seminar



Idaho Court of Appeals Judge Sergio Gutierrez recently attended the National Consortium on Racial and Ethnic Fairness in the Courts in Washington, D.C. The Consortium is composed of representatives of the various state judicial task forces and commissions dealing with racial and ethnic fairness. The theme of this year's meeting was the commemoration of the 50th anniversary of the historic Brown v. Board of Education decision.

During the meeting, Conference of Chief Justices (CCJ) President Ron George gave a keynote address on CCJ's current and historical support for the Consortium and the state racial and ethnic task forces. In addition, National Conference of State Courts (NCSC) President Roger Warren awarded retired Washington State Justice Charles Z. Smith the 2004 NCSC Distinguished Service Award. Justice Smith was the first Moderator of the Consortium, a position he held for 10 years.

In other business, the Consortium nominated Judge Max Tobias of New Orleans to be the next Chair/Moderator of the Consortium. He replaces New Mexico Justice Patricio Serna.

## Standard Forms Committee Appointed

The chair of the Committee to Increase Access to the Courts recommended to the Supreme Court that the Standard Forms Committee become a standing committee. The charge of the committee will be to continue to work at the behest of the Supreme Court, the Access to the Courts Committee, or the Court Assistance Office project director. The committee will be available to update standard forms as needed; review any forms submitted to it; draft forms as requested; recommend adoption of forms submitted to it, or if not, why not; and seek Supreme Court approval after piloting of the forms.

Judge David Day, Magistrate Judge, Ada County, has agreed to chair the new Standard Forms Committee.

# TECHNOLOGY/ISTARS



## New ISTARS Procedures

HB 519 "Misdemeanor Drug Restitution" allows courts to order restitution paid to any law enforcement agency for investigation of drug crimes, racketeering or money laundering. Current law allows restitution for FELONY drug crimes, racketeering or money laundering. This legislation provides the same capabilities for MISDEMEANOR violations. ISTARS currently has a cost/fee category for 'restitution-drug' account on the fine screen. Monies from this category are totaled as a separate line item 'restitution drug' on the cost/fee distribution report. This cost/fee category will be kept in place and can still be used for felony drug crimes, racketeering or money laundering.

Since HB 519 allows for restitution to ANY law enforcement agency (including county/city prosecuting attorneys, ISP or attorney general) for misdemeanor drug crime investigations, clerks should enter restitution monies ordered using the current 'victim restitution' procedures. Clerks need to be very clear when entering the specific agency so monies can be accurately disbursed. Monies for ISP go to one account and monies for the Attorney General go to a different account and monies for local agencies to other accounts. No new programming has been added to ISTARS since many different agencies could receive monies from this legislation and programming for all possibilities would be difficult.

HB 520 "DNA Restitution" allows courts to order restitution paid to any law enforcement agency for DNA analysis up to \$500 per DNA sample, or in the aggregate not more than \$2000. This is very similar to HB 519 in that ANY law enforcement agency could receive monies. Again, clerks should enter court ordered DNA analysis restitution using current 'victim restitution' procedures. No new programming has been added to ISTARS for this legislation.

If you have questions or would like to discuss any legislation, please call ISTARS Coordinators, Karen Allport 208-392-3555 or Julie Cottrell 208-334-3468.



## New Orders & Rule Changes

<http://www.isc.idaho.gov/rulesamd.htm>

A summary of all Rule Changes & each Order is available on the court's website.

### **Amendment of Idaho Child Support Guidelines, I.R.C.P. 6(c)(6) - April 8, 2004, effective July 1, 2004**

The Supreme Court adopted the following changes to the Child Support Guidelines: Section 8: Adjustments to the award of child support; Section 8(c): Tax benefits; and Section 9: Income verification. Appendix A has also been amended to delete the social security number of the parties from the affidavit of income.

### **Amendment of Idaho Rules of Civil Procedure, IRCP 5(e)(2) - April 29, 2004, effective July 1, 2004**

Amended to mirror changes in the Criminal Rules regarding filing by facsimile and should be read in their entirety.

## (New Orders & Rule Changes Continued)

### **Amendment of Idaho Rules of Civil Procedure - April 22, 2004, effective July 1, 2004**

Rule 3(a) regarding commencement of actions was amended to require that "complaints, petitions or applications in family law cases, including divorce, custody, paternity, modification, guardianship, adoption, termination of parental rights, and civil protection orders shall not be filed unless and until the filing party furnishes to the clerk a completed family law case information sheet on a form adopted by the Supreme Court and furnished by the clerk." This family law case information sheet shall be exempt from disclosure according to I.C.A.R. 32(d).

Rule 3(a)(2) has been added to require that an action for a domestic violence protection order may not be filed unless accompanied by information in whatever form required by the court to allow entry of the protection order into the Idaho Law Enforcement Telecommunication System (to be transferred by the court to the appropriate law enforcement agency with any signed order). All clerks should maintain copies of the Family Law case information sheet, available on the Supreme Court's website.

### **Amendment of I.I.R. 9 - April 22, 2004 - effective July 1, 2004**

Amended Infraction Rule 9 to read as follows: Rule 9. Judgment – Fixed penalty for infractions – withheld judgment and suspended penalties prohibited – Deferred payment agreements.

### **Order Amending Infraction Rule 9**

Senate Bill 1283 created two new infractions in the area of smoking in public buildings and offices.

### **Amendment of Idaho Criminal Rules - April 22, 2004, effective July 1, 2004**

These rule changes address the form of pleadings, transfer from the county for plea and sentence, trial jurors – removal by lot, disqualification without cause, instructions and communications with jury, procedure where death penalty is authorized, evaluations of persons guilty of domestic assault and battery, and no-contact orders. All no-contact orders must now contain a specific date of expiration. In addition, no-contact orders terminate when the criminal case is dismissed. Whenever a no-contact order is issued, modified, or terminated by the court, or the criminal case

is dismissed, the clerk shall give written notification to the records department by the Sheriff's office in the county in which the order was originally issued **immediately**. When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order. A victim of a criminal offense for which a no-contact order has been issued may request modification or termination of that order by filing a written and signed request with the clerk of the court in which the criminal offense is filed. Forms for such a request shall be available from the clerk. The court shall provide for a hearing within five days of the request, and shall provide notification of a hearing to the victim and the parties.

### **Amended Idaho Court Administrative Rule (I.C.A.R.) 32**

Records exempt from disclosure. § 14 exempts from disclosure records maintained by a court that are gathered at the request or under the auspices of the court, and 14(b) includes records to assist in the signing of an appropriate disposition in the case. This section has been amended to specifically reference that the family law case information sheet and ADR screening report are exempt from disclosure.

### **Amendment of Idaho Misdemeanor Criminal Rule 13**

The bonds for the offenses of stalking, domestic assault, or battery in violation of protection order in domestic violence cases have been deleted, and these offenses now appear on the bond schedule with the statement that there is "no bond until court appearance."

### **Membership of Children And Families In The Courts Committee**

[www.isc.idaho.gov/CFCCORD.htm](http://www.isc.idaho.gov/CFCCORD.htm)

### **Membership of Discovery Committee**

[www.isc.idaho.gov/Discvr04.htm](http://www.isc.idaho.gov/Discvr04.htm)

### **Re-Appointment To Shorthand Reporters Board**

[www.isc.idaho.gov/Shorthand.htm](http://www.isc.idaho.gov/Shorthand.htm)



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Justice Gerald F. Schroeder

Justice Wayne L. Kidwell

Justice Daniel T. Eismann

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We are very interested in your news and information. If you have or are aware of items that should be featured in a future edition of Judicial/Administrative News please let us know!

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Thanks!



**Note:** For the most up-to-date Judicial Calendar,  
check the Judiciary's homepage at  
<http://www.isc.idaho.gov/calendar.htm>